

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

In Re: § Case No. 20-60321-rbk
NORTH TEXAS MARINA §
INVESTMENTS, LLC, §
§
Debtors. § Chapter 7

**MOTION TO SELL PROPERTY OF THE BANKRUPTCY ESTATE FREE
AND CLEAR OF LIENS AND OTHER INTERESTS AND FOR PAYMENT OF
AUCTIONEER'S FEES AND EXPENSES OF SALE**

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within 21 days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

TO THE HONORABLE RONALD B. KING, CHIEF U.S. BANKRUPTCY JUDGE:

COMES NOW James Studensky, Trustee (“Trustee”), the duly appointed and acting trustee in the above-captioned bankruptcy case, and files this his *Motion to Sell Property of the Bankruptcy Estate Free and Clear of Liens and Other Interests and for Payment of Auctioneer’s Fees and Expenses of Sale* (the “Motion”), and in support thereof would respectfully show the Court as follows:

I. SUMMARY

1. The Chapter 7 bankruptcy estate includes numerous and various items of tangible personal property. By this Motion, the Trustee seeks permission to sell such property free and clear of liens and other interests; the proposed sale will be a public auction to be held at Uncle Gus' Marina at Lake Whitney, 112 County Rd. 1710, Clifton, Texas, 76634 on Saturday, August 21, 2021 at 10:00 a.m.. Lien rights with respect to some of those items may be disputed: by this

Motion, the Trustee seeks authority for the Auctioneer to sell even disputed items, with the related interests to attach to the net proceeds of the sale.

II. JURISDICTION

2. This Court has jurisdiction over this proceeding under 28 U.S.C. §§ 157 and 1334.

This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b).

III. BACKGROUND AND ARGUMENT

3. The movant is James Studensky, Chapter 7 Trustee in this case which was filed on January 6, 2020 (the “Petition Date”).

4. The Trustee has sought authority to retain as auctioneer Bill Hall of Bill Hall Auctioneers, Inc. (the “Application to Retain Auctioneer”) [see Application at Dkt. No. 179].

5. As of the Conversion Date, the Debtor claimed ownership interests in the personal business property listed on Conversion Schedules, [Dkt. No. 156] (the “Property”), incorporated herein by reference. Those ownership interests are now part of the Bankruptcy Estate. The Trustee herein seeks approval to sell (the “Property”).

6. The Trustee intends to sell the Property by public auction (the “Auction”) pursuant to 11 U.S.C. § 363(b) and (f) and Bankruptcy Rule 6004, as set forth below:

PROPERTY

DESCRIPTION: All of Debtor’s non-exempt tangible personal property formerly used in connection with his business, as listed on the Conversion Schedules.

DATE AND TIME

OF AUCTION: 10:00 a.m., Saturday, August 21, 2021.

TERMS:

Free and clear of all liens, with all valid claims of ownership and unavoidable liens to attach to the proceeds of sale.

PLACE OF SALE: Uncle Gus’ Marina, 112 County Rd. 1710, Clifton, Texas 76634.

IDENTITY OF

AUCTIONEER: As reflected in the Application to Retain Auctioneer, Bill Hall of Bill Hall Auctioneers, Inc.

RATE OF
AUCTIONEER'S

COMPENSATION: As reflected in the Application to Retain Auctioneer, ten percent (10%) of the gross sales price, plus reasonable expenses, with a 10% buyer's premium to be paid to the Auctioneer by any buyers.

7. Marketing and sale of the Property is necessary and beneficial for purposes of minimizing any administrative costs that might be associated with securing and storing the Property.

8. The Trustee hereby seeks to pay the commissions stated above, and as further pleaded for in the Application to Retain Auctioneer, together with all expenses of sale, out of the gross auction proceeds, upon receipt thereof.

9. The Property is claimed as property of the bankruptcy estate and is being sold free and clear of liens and other interests, with all other valid claims of ownership and unavoidable liens to attach to the proceeds. There are no warranties, express or implied, and the Property is being sold "as-is and where-is."

10. Bankruptcy Rule 6004 requires a motion and order from the Court to effectuate a sale free and clear of liens. A sale free and clear of liens is necessary to induce buyers to purchase the Property. It is necessary to file this Motion so that any party-in-interest asserting a lien, whether or not such assertion is known to Trustee or Debtor, will be placed on notice that the Property will be sold free and clear of its liens unless otherwise ordered by the Court.

11. Concurrently with the filing of this Motion, the Trustee will mail to all creditors the notice attached hereto as **Exhibit 1**, pursuant to Bankruptcy Rule 2002 and Local Rule 2002. If no timely objections are filed, the Court should enter an order finding that the Property is claimed as owned by the Bankruptcy Estate, approving the sale, and approving the payment of fees and

expenses.

12. In the event that the Auction is moved to a different date due to circumstances beyond the Trustee's control, the Trustee will promptly file a Notice of Auction on the Court's docket identifying any such revised date for the Auction.

13. Furthermore, the Trustee requests the right to authorize the Auctioneer to sell any of the Property via private sale.

WHEREFORE PREMISES CONSIDERED, James Studensky, Chapter 7 Trustee, prays that the Court approve this Motion and authorize the Trustee to sell the Property as set forth herein, and for other just relief.

Respectfully submitted,

By:/s/ James Studensky

James Studensky, Chapter 7 Trustee

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By:/s/ Brian T. Cumings

Brian T. Cumings
State Bar No. 24082882

COUNSEL FOR CH. 7 TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that on this the 11th day of June, 2021, I electronically filed this Motion with the Clerk of Court using the CM/ECF system which will send notification of such filing to those receiving electronic service, and service is being made by U.S. First Class Mail as reflected below and on those not receiving electronic notice. A Notice of this Motion to Sell is being mailed by U.S. First Class Mail within two business days, to those listed on the current creditors matrix appended herewith and if indicated by mail below.

Office of the United States Trustee
903 San Jacinto, Room 230
Austin, TX 78701

James Studensky, Chapter 7 Trustee
3912 W. Waco Dr.
Waco, TX 76710

North Texas Marina Investments, LLC
112 County Road 1710
Cabin 10
Clifton, TX 76634
Debtor

S. Jason Gallini
The Gallini Firm, PLLC
PO Box 1283
Round Rock, TX 78680
Debtors' Counsel

Proposed Auctioneer:

Bill Hall
Bill Hall Auctioneers, Inc.
P.O. Box 339
Salado, Texas 76571

By:/s/ *Brian T. Cumings*

Brian T. Cumings